

Under the Use Tax Act, donors who purchase tangible personal property and give it away make a taxable use of the donated property. See 86 Ill. Adm. Code 150.305(c). (This is a GIL).

July 27, 2001

Dear Xxxxx:

This letter is in response to your letter dated May 14, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing to request your assistance with respect to the application of sales tax regulations related to direct mail services. Specifically, I would like to know whether a sales tax should be charged and collected in the following situation:

- Direct mail firm (DMF) is engaged in the business of producing and mailing direct mail pieces on behalf of its clients. The direct mail pieces consist of new order forms and renewal order forms mailed to existing customers and potential customers (new subscribers) of its clients. The DMF conducts its printing and mailing operations outside of the State of Illinois but maintains an office (with employees) within the State of Illinois. Its client, on whose behalf it is conducting the direct mail campaign, does not have any nexus within the State of Illinois. The client's operations consist of mailing periodicals, from outside of the State of Illinois, to customers in every state. The DMF charges its clients for the costs of printing and mailing the direct mail pieces and a fee (at an hourly rate) for services rendered.

Should the DMF charge any sales tax, prorated based upon the number of pieces mailed within the State of Illinois, to its clients? If so, would the sales tax be charged on the printing and mailing costs, the service fee, or both?

Your response will be useful in assisting me to guide my client to properly comply with the sales and use tax regulations of the State of Illinois. I appreciate your attention to this matter.

Unfortunately, the application of the Service Occupation Tax is extremely fact-dependent. We cannot answer your questions without a great deal of specific information regarding the parties and transactions you have briefly described. We can provide you with general information, however.

In the situation you have described, if a purchase order for custom printed materials is accepted in Illinois and deliveries are made in Illinois, then a Service Occupation Tax situation arises. Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. If tax is based upon either of the first three methods, the serviceman must collect a corresponding amount of Service Use Tax from the service customer, absent a valid exemption. The final method of calculating tax liability does not result in tax liability for the service customer, however.

Under the Use Tax Act, donors who purchase tangible personal property and give it away make a taxable use of the donated property. See 86 Ill. Adm. Code 150.305(c). If the use occurs in Illinois, Use Tax liability (or, potentially, Service Use Tax liability, for custom printed materials) by the donor is incurred.

However, if the direct mail firm accepts the purchase orders outside of Illinois, and its printing and mailing operations are conducted outside of the State of Illinois, no power or control is generally exercised over the property shipped in Illinois. Therefore, no taxable use of the property would be made in Illinois.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.